

Sep 19, 2019

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

SCOTT LEE DOTY,

Petitioner,

v.

JEFFREY A. UTTECHT,

Respondent.

No. 4:19-cv-05187-SMJ

**ORDER SUMMARILY
DISMISSING HABEAS CORPUS
PETITION**

Petitioner Scott Lee Doty, a prisoner at the Coyote Ridge Corrections Center, brings this *pro se* Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus By a Person in State Custody, ECF No. 1. Due to a clerical error, payment of the \$5.00 filing fee on July 25, 2019, was not noted on the docket in this case until September 16, 2019. Consequently, Petitioner has complied with the requirements of Rule 3(a) of the Rules Governing Section 2254 Cases in the United States District Courts, and the Court will proceed with this action.

EXHAUSTION REQUIREMENT

Petitioner challenges his 1994 Benton County convictions, pursuant to guilty pleas, to three counts of first-degree rape and two counts of first-degree burglary. He received a sentence of 480 months' confinement. Petitioner does not indicate

1 that he filed a direct appeal or sought state collateral review. ECF No. 1 at 3–4.

2 Throughout the grounds for relief set out in his petition, Petitioner argues that
3 the state of Washington lacks jurisdiction to decide federal constitutional matters.
4 *Id.* at 6–13. It has long been settled that state courts are competent to decide
5 questions arising under the U.S. Constitution. *See Baker v. Grice*, 169 U.S. 284,
6 291 (1898) (“It is the duty of the state court, as much as it is that of the federal
7 courts, when the question of the validity of a state statute is necessarily involved, as
8 being in alleged violation of any provision of the federal constitution, to decide that
9 question, and to hold the law void if it violate that instrument.”); *see also Worldwide*
10 *Church of God v. McNair*, 805 F.2d 888, 891 (9th Cir. 1986) (holding that state
11 courts are as competent as federal courts to decide federal constitutional matters).
12 Petitioner’s arguments to the contrary are meritless.

13 Additionally, before a federal court may grant habeas corpus relief to a state
14 prisoner, the prisoner must exhaust the state court remedies available to him or her.
15 28 U.S.C. § 2254(b); *Baldwin v. Reese*, 541 U.S. 27 (2004). Exhaustion generally
16 requires that a prisoner give the state courts an opportunity to act on his or her claims
17 before he or she presents those claims to a federal court. *O’Sullivan v. Boerckel*,
18 526 U.S. 838 (1999). A petitioner has not exhausted a claim for relief so long as he
19 or she has a right under state law to raise the claim by an available procedure. *See*
20 *id.*; 28 U.S.C. § 2254(c).

1 To meet the exhaustion requirement, the petitioner must have “fairly
2 present[ed] his claim in each appropriate state court (including a state supreme court
3 with powers of discretionary review), thereby alerting that court to the federal
4 nature of the claim.” *Baldwin*, 541 U.S. at 29; *see also Duncan v. Henry*, 513 U.S.
5 364, 365–66 (1995). A petitioner fairly presents a claim to a state court by
6 describing the factual or legal bases for that claim and alerting the state court “to
7 the fact that the [petitioner is] asserting claims under the United States
8 Constitution.” *Duncan*, 513 U.S. at 365–66; *see also Tamalini v. Stewart*, 249 F.3d
9 895, 898 (9th Cir. 2001). Mere similarity between a claim raised in a state court and
10 a claim in a federal habeas corpus petition is insufficient. *Duncan*, 513 U.S. at 365–
11 66.

12 Furthermore, to fairly present a claim, the petitioner “must give the state
13 courts one full opportunity to resolve any constitutional issues by invoking one
14 complete round of the State’s established appellate review process.” *O’Sullivan*,
15 526 U.S. at 845. Once a federal claim has been fairly presented to the state courts,
16 the exhaustion requirement is satisfied. *See Picard v. Connor*, 404 U.S. 270, 275
17 (1971). It appears from the face of the petition and the attached documents that
18 Petitioner has not exhausted his state court remedies as to each of his grounds for
19 relief. *See* ECF No. 1.

20 Additionally, a petitioner convicted in 1994 who neither appealed his or her

conviction nor pursued state collateral review would be time-barred from presenting a federal habeas corpus petition in 2019. *See* 28 U.S.C. § 2244(d). Petitioner’s assertions that this is an “original action” challenging the constitutionality of provisions of a state constitution, ECF No. 1 at 14, will not excuse the untimeliness, *see Holland v. Florida*, 560 U.S. 631, 649 (2010); *Waldron-Ramsey v. Pacholke*, 556 F.3d 1008, 1011 (9th Cir. 2009); *Harris v. Carter*, 515 F.3d 1051, 1055 (9th Cir. 2008).

GROUND FOR FEDERAL HABEAS CORPUS RELIEF

Petitioner asserts that the Washington State Constitution contradicts the U.S. Constitution regarding the Fifth Amendment right to “presentment or indictment of a Grand Jury.” ECF No. 1. He claims “no bill of indictment” was brought against him, rendering his arrest, conviction, and imprisonment illegal. *Id.*

Petitioner seems to argue that because the state courts have defied “federally established procedures and processes for the adjudication of crimes,” only “a court of federal jurisdiction” has jurisdiction over his claims. *Id.* His bald assertion that “due process of the law was ignored” is unsupported by his factual allegations. *Id.*

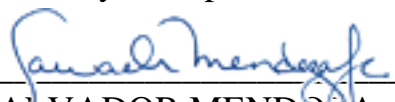
As the U.S. Supreme Court stated long ago, “Prosecution by information instead of by indictment is provided for by the laws of Washington. This is not a violation of the Federal Constitution.” *See Gaines v. Washington*, 277 U.S. 81, 86 (1928). There is no federal constitutional violation when a prosecuting attorney’s

1 criminal information is substituted for the grand jury's indictment. *See Hurtado v.*
2 *California*, 110 U.S. 516 (1884) (rejecting the claim that an indictment is essential
3 to due process of law and that a state violates the Fourteenth Amendment by
4 prosecuting a defendant with a criminal information). Petitioner's assertions to the
5 contrary presented in his four grounds for federal habeas corpus relief are legally
6 frivolous.

7 Because it plainly appears from the petition and accompanying documents
8 that Petitioner is not entitled to relief in this Court, **IT IS HEREBY ORDERED**
9 that the petition, ECF No. 1, is **DISMISSED** pursuant to Rule 4 of the Rules
10 Governing Section 2254 Cases in the United States District Courts. All pending
11 motions are **DENIED AS MOOT**.

12 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order,
13 enter judgment, provide copies to Petitioner, and close the file. The Court certifies
14 that, pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be
15 taken in good faith and there is no basis upon which to issue a certificate of
16 appealability. *See* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A certificate of
17 appealability is therefore **DENIED**.

18 **DATED** this 19th day of September 2019.

19 
20 SALVADOR MENDOZA, JR.
United States District Judge